

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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OMAR MALCOLM, on behalf : Case No.: 20-cv-9641
of all others similarly :
situated,
Plaintiff, :
v.
CITY OF NEW YORK, : New York, New York
Defendants : August 8, 2024

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TRANSCRIPT AND STATUS CONFERENCE HEARING

BEFORE THE HONORABLE ANDREW L. CARTER

UNITED STATES DISTRICT JUDGE

APPEARANCES:

For Plaintiff: LAW OFFICE OF JASON L. ABELOVE, PC
BY: Jason L. Abelove, Esq.
Paul A. Pagano, Esq.
666 Old Country Road - Suite 303
Garden City, New York 11530

For Plaintiff: MOSER LAW FIRM
BY: Steven J. Moser, Esq.
133 C New York Avenue
Huntington, New York 11743

For Defendant: JACKSON LEWIS P.C.
BY: Adam S. Gross, Esq.
Felice B. Ekelman, Esq.
Annabel R. Stanley, Esq.
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New York, New York 10017

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1 THE DEPUTY CLERK: Good afternoon. This is
2 Tara, Judge Carter's deputy. Who just joined the
3 call, please?

4 MR. ABELOVE: Yeah, hi, this is Jason
5 Abelove and Paul Pagano, counsel for plaintiffs.

6 THE DEPUTY CLERK: Yes, thank you so much,
7 sir.

8 MR. ABELOVE: Thank you so much.

9 THE DEPUTY CLERK: Good afternoon. This is
10 Tara, Judge Carter's deputy. Who just joined the
11 call, please?

12 THE COURT: Hi, Tara, it's Judge Carter.

13 THE DEPUTY CLERK: Hi, Judge.

14 Good afternoon. This is Tara, Judge
15 Carter's deputy. Who just joined the call, please?

16 MR. GROSS: Good afternoon. This is Adam
17 Gross from Jackson Lewis for the City.

18 THE DEPUTY CLERK: Thank you, Mr. Gross.
19 Are you having any additional counsel joining you
20 today?

21 MR. GROSS: I believe my colleague, Felice
22 Ekelman, is planning on joining, if she's not
23 already on the line.

24 THE DEPUTY CLERK: Okay. Thank you.

25 Good afternoon. This is Tara, Judge

1 Carter's deputy. Who just joined the call, please?

2 MR. MOSER: Steven Moser.

3 THE DEPUTY CLERK: Thank you, Mr. Moser.

4 Good afternoon. This is Tara, Judge

5 Carter's deputy. Who just joined the call, please?

6 MS. STANLEY: Hi, this is Annabel Stanley
7 from Jackson Lewis for defendants.

8 THE DEPUTY CLERK: Thank you, Ms. Stanley.

9 Good afternoon. This is Tara, Judge

10 Carter's deputy. Who just joined the call, please?

11 MS. EKELMAN: Felice Ekelman.

12 THE DEPUTY CLERK: Thank you, Ms. Ekelman.

13 Good afternoon. This is Tara, Judge

14 Carter's deputy. Who just joined the call, please?

15 THE LAW CLERK: Hi, Tara. It's Jess.

16 THE DEPUTY CLERK: Hi, Jess.

17 So, Counsel, today's telephone conference
18 is being recorded. So I ask that each time that you
19 address the Court to please state your name prior to
20 speaking, and when you are not addressing the Court
21 to please place your phone on mute. Thank you.

22 Civil cause for a telephone conference in
23 case number 20-cv-9641, Malcolm, et al. vs. City of
24 New York, et al.

25 Counsel, please state your appearances for

1 the plaintiffs.

2 MR. ABELOVE: Good afternoon, Your Honor.
3 Jason Abelove, and present with me is Paul Pagano,
4 Law Offices of Jason Abelove, PC, 666 Old Country
5 Road, Garden City, New York.

6 MR. MOSER: And Steven Moser for the
7 plaintiffs.

8 THE DEPUTY CLERK: And for the defendant?

9 MS. EKELMAN: Felice Eckelman --

10 MR. GROSS: Adam Gross --

11 MS. EKELMAN: Oh --

12 MR. GROSS: You have both Felice Eckelman
13 and Adam Gross and Annabel Stanley from Jackson
14 Lewis for the defense, for the City.

15 THE DEPUTY CLERK: Thank you.

16 THE COURT: Okay. Good afternoon. We're
17 here today to discuss the ongoing dispute between
18 plaintiffs' counsel.

19 Upon review of the Moser law firm's letter
20 dated July 25, 2024, it's my understanding that
21 Moser alleges that he remains designated counsel of
22 record. And upon the review of Abelove and Pagano's
23 letter dated July 30, 2024, it's my understanding
24 that plaintiffs' counsel alleges that plaintiffs
25 terminated the Moser law firm in February 2022.

1 So let me just find out from Mr. Moser, did
2 your client terminate you in February 2022?

3 MR. MOSER: I read this news Mr. Pagano
4 that the clients had terminated me when he left the
5 Moser law firm, but I don't have anything to
6 substantiate that.

7 THE COURT: Did you respond in an e-mail
8 that you would cease working on the case
9 immediately?

10 MR. MOSER: Yes.

11 THE COURT: Okay. So why is it that you
12 feel, if you feel, that you are still counsel on
13 this case?

14 MR. MOSER: Simply because the -- I
15 would -- the defense counsel -- plaintiffs' counsel
16 never moved to displace me. And I haven't seen
17 anything in terms of hard evidence that what they're
18 saying is correct.

19 The other thing that I will bring up is
20 that the elephant in the room is that --

21 THE COURT: Hold on. Hold on. Hold on.
22 Hold on. Hold on. Hold on, before we get to any
23 other elephant.

24 MR. MOSER: Okay.

25 THE COURT: So what you just said is that

1 you haven't been terminated because the plaintiff
2 didn't move -- because Abelov didn't move to
3 terminate you?

4 MR. MOSER: Correct.

5 THE COURT: Okay. And if Abelov were to
6 move to terminate you today, what reason would there
7 be for me not to grant that today?

8 MR. MOSER: The settlement agreement
9 itself, Your Honor, is just -- it's wholly
10 deficient.

11 THE COURT: No. No. No. My question
12 is about you being counsel. What would be any
13 reason for me not to terminate? If you're saying
14 the sole reason is you believe that you are still
15 counsel of record is that Abelove didn't move to
16 terminate you, if Abelove were to move to terminate
17 you right now, why shouldn't I grant that motion?

18 MR. MOSER: The only reason to not grant
19 that motion would be, Your Honor, that the --
20 there's an inherent conflict of interest between
21 Abelove and his clients, which is an irreconcilable
22 difference in the agreement that Abelove and
23 Pagano --

24 THE COURT: No. No. Hold on. Hold on.
25 That's got nothing to do with you, does it? What

1 does that have to do with you?

2 MR. MOSER: No, that would just be the
3 disqualification of them, that is correct.

4 THE COURT: So again, if there is, what
5 reason would there be for me not to grant any motion
6 to terminate you right now?

7 MR. MOSER: Other than what I've mentioned,
8 nothing.

9 THE COURT: Okay. Now, tell me about
10 elephants. What elephant are we talking about?

11 MR. MOSER: The elephant in the room is
12 attorney's fees. The case was settled in December
13 of 2023 supposedly, and the way the settlement is
14 structured --

15 THE COURT: Hold on. Hold on. Hold on.
16 Hold on. Hold on. Hold on. Can't attorney's fees
17 be dealt with after any approval of the settlement?

18 MR. MOSER: I'm totally okay with that,
19 Your Honor, so long as that's -- it's made
20 explicitly clear that, you know, my lien on the
21 attorney's fee survives the settlement. I'm not
22 interested in standing in the way of it. I'm just
23 here to protect my rights.

24 THE COURT: So to be clear, if I were to
25 terminate you as counsel, you still have a lien on

1 the settlement -- you still have a lien for
2 attorney's fees. And you agree that the attorney's
3 fees dispute can be solved later if, in fact, this
4 settlement is approved by the Court, correct?

5 MR. MOSER: Correct.

6 THE COURT: Okay. So then what is -- what
7 reason is there -- well, let me rephrase that.

8 Is there any reason at all for you to be
9 involved in objecting to the settlement at this
10 point?

11 MR. MOSER: Well, aside from the due
12 process concerns, the way that Abelove and Pagano
13 structured the settlement, it's an attempt to
14 circumvent my request or my lien for fees based upon
15 an agreement with Mr. Pagano. That's one issue that
16 I have with it. But if the Court is saying that the
17 lien for attorney's fees will survive the
18 settlement, then, you know, I'll stand aside.

19 THE COURT: Okay. Let me hear from
20 Abelove.

21 MR. ABELOVE: Your Honor, that's sort of --
22 that's our position, really. I think that to the
23 extent Mr. Moser is entitled to fees, that can be
24 dealt with later. And I think that this -- that was
25 our point and our response, that this really was all

1 about fees and not about the underlying agreement.
2 Like, we anticipate -- we're hopeful and anticipate
3 that the settlement agreement will be approved by
4 this Court. The Court is welcome to do that now if
5 it wants, but, you know, we anticipate that that's
6 going to be approved by the Court.

7 The language that Mr. Moser is complaining
8 about is virtually identical to, I think, eight
9 other agreements that the City has entered into that
10 have been approved. I mean, even the section
11 numbers are pretty -- are almost the same. And we
12 even looked at agreements that Mr. Moser has, and
13 it's similar to those. So there's nothing unusual
14 about it, but certainly, like, my position has --

15 THE COURT: Enough. That's enough. Hold
16 on. Hold on.

17 Let me go back to Mr. Moser and ask this
18 question. You raised something about
19 disqualification of plaintiffs' counsel. Is this,
20 again, related to attorney's fees or something else?

21 MR. MOSER: This -- if I still represent --
22 I can be heard if I no longer represent these
23 individuals, Your Honor. But if the Court believes
24 that I no longer represent these individuals and
25 wants to relieve me, then I have no continuing

1 obligation to anyone to contest the settlement.

2 THE COURT: I understand that you raised
3 something about a conflict of interest. And again,
4 is this conflict of interest, this alleged conflict
5 of interest, does that something to do with the
6 attorney fees or is it something else?

7 MR. MOSER: No.

8 THE COURT: No, what? Is it something
9 else? Or no, what?

10 MR. MOSER: It's something in the
11 agreement.

12 THE COURT: All right. So defense counsel,
13 do you wish to be heard on this at all?

14 If you're speaking, you're on mute.

15 MS. EKELMAN: No, your Honor.

16 THE COURT: Okay. All right.

17 Mr. Abelove, are you moving for the
18 termination of the Moser firm as counsel?

19 MR. ABELOVE: Yes, Your Honor.

20 THE COURT: That is granted.

21 I will focus my attention soon again on the
22 settlement agreement. And all parties are in
23 agreement that the lien continues; is that correct,
24 Mr. Abelove?

25 MR. ABELOVE: Yes, to the extent -- yes.

1 Yes, your Honor.

2 THE COURT: Is that correct, defense
3 counsel?

4 Again, if you're speaking, I cannot hear
5 you.

6 MS. EKELMAN: We're not aware of any liens.

7 THE COURT: The lien from the attorneys. I
8 know this doesn't directly -- may not directly
9 concern you.

10 MS. EKELMAN: No, it does not.

11 THE COURT: Okay. All right. So we are
12 adjourned. Thank you very much.

13 MR. MOSER: Thank you.

14 MR. ABELOVE: Thank you, Your Honor.

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C E R T I F I C A T E

I, Adrienne M. Mignano, certify that the foregoing transcript of proceedings in the case of Malcolm, et al. v. City of New York; Docket #20CV9641 was prepared using digital transcription software and is a true and accurate record of the proceedings.

Signature Adrienne M. Mignano

ADRIENNE M. MIGNANO, RPR

Date: November 27, 2024